

propriate unit. The Employer likewise indicated no position on the unit question.

We do not agree with the Petitioner that only the multiplant unit is appropriate here. The relatively proximity of the plants; the top-level supervision, which appears to be on a multiplant basis; and the similarity of work performed by the office clericals at plants Nos. 1 and 2, indicate that a multiplant unit may be appropriate. On the other hand, we note that the immediate supervision of the office clerical employees is on a single-plant basis, and that the Employer's bargaining history with respect to its other employees has always been on a single-plant basis. In these circumstances, we are of the opinion that either a separate unit of all office clericals at plant No. 1 or a multiplant unit of all office clericals at plants Nos. 1 and 2, may be appropriate.

We shall, therefore, direct an election in the following voting group: All office clerical employees of the Employer at its plant No. 2, located at Wheatsheaf Lane and Sepviva Street, Philadelphia, Pennsylvania, but excluding timekeepers, shop expeditors, draftsmen, engineers, tool designers, personnel department employees, secretaries to plant officials, sales correspondents, and supervisors as defined in the Act. If a majority of the employees voting cast their ballots for the Petitioner, they will be taken to have indicated their desire to be part of a multiplant unit consisting of all of the Employer's office clerical employees at plants Nos. 1 and 2 and the Petitioner may bargain for them on this basis; if a majority select the Intervenor they will be taken to have indicated their desire to be represented in a single unit of the Employer's plant No. 2 office clericals and the Intervenor may bargain for them on this basis.

[Text of Direction of Election omitted from publication.]

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**Lloyd Reisner, Business Agent of Local 135; Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL and Coleman Wiggins.** *Case No. 35-CB-145. April 5, 1955*

### DECISION AND ORDER

On December 23, 1954, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices in violation of Section 8 (b) (1) (A) of the Act and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in a copy of the Intermediate Report.

attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report together with a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:

#### THE REMEDY

Like the Trial Examiner, we find that on May 4, 1954, when Wiggins approached the individual Respondent, Reisner, at his home to obtain admission to the Respondent Union, Reisner assaulted Wiggins in reprisal for his having worked at the Indiana Oxygen Company during a strike conducted by the Respondent Union; that such assault violated Section 8 (b) (1) (A) of the Act; and that the Respondent Union was responsible for such violation by its agent, Reisner, while acting within the scope of his employment.<sup>1</sup> However, in view of the isolated and spontaneous nature of Reisner's action, and the fact that Wiggins has continued since the incident of May 4, 1954, to work at a plant under Reisner's jurisdiction without further molestation of any kind, we do not believe that effectuation of the purposes of the Act requires that we adopt the broad cease and desist order recommended by the Trial Examiner. We will, accordingly, limit our cease-and-desist order so as to prohibit any repetition of the specific misconduct found in this case and any like or related acts.

#### ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Respondents Lloyd Reisner and Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from assaulting employees of Midwest Transfer Company, of Indianapolis, Indiana, or any other employer because of their refusal to engage in concerted activities; and in any like or related manner restraining or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and

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<sup>1</sup> See *Grauman Company*, 100 NLRB 753, 754-755, enf'd 205 F.2d 515 (C.A. 10); *Abe Meltzer, Inc.*, 108 NLRB 1506.

all such activities, except to the extent such rights may be affected by an agreement requiring membership in a Union.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act :

(a) Post in conspicuous places in the business offices of the Respondent in Indianapolis, Indiana, and in all places where notices to union members are customarily posted, copies of the notice attached hereto, marked "Appendix A."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being signed by official representatives of Respondent, be posted immediately and maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Ninth Region, copies of said signed notice for posting, the Company willing, on bulletin boards of the Midwest Transfer Company, Indianapolis, Indiana, where notices to employees are customarily posted.

(c) Notify the Regional Director for the Ninth Region, in writing, within ten (10) days from the date of this Order, what steps Respondents have taken to comply therewith.

**MEMBER LEEDOM** took no part in the consideration of the above Decision and Order.

<sup>2</sup> In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order "

## APPENDIX A

### NOTICE TO ALL MEMBERS OF LOCAL NO. 135, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby give notice that :

WE WILL NOT assault employees of Midwest Transfer Company, Indianapolis, Indiana, or any other employer, because of their refusal to engage in concerted activities, nor will we in any like or related manner restrain or coerce them in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except to the extent that such

rights may be affected by an agreement requiring membership in a union.

LOCAL NO. 135, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-  
MEN, HELPERS OF AMERICA, AFL

*Union.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative)

(Title)

By Lloyd Reisner,

*Business Agent.*

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

### INTERMEDIATE REPORT

#### STATEMENT OF THE CASE

Upon charges filed on May 7, 1954, by Coleman Wiggins, an individual, that on or about May 4, 1954, Lloyd Reisner, business agent and authorized agent of the above local organization, assaulted Coleman Wiggins upon the occasion of the Wiggins' application for membership due to the exercise by him of his right to refrain from union activity in connection with the Indiana Oxygen Company strike, the General Counsel of the National Labor Relations Board (herein called the General Counsel and the Board), issued a complaint on September 15, 1954, against Respondents Lloyd Reisner, business agent of Local 135, and Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (herein called the Union), alleging that the Respondent Union, through and by its officers, agents, and employees, at all times material hereto, has restrained and coerced employees of the Midwest Transfer Company (herein called the Employer) in the exercise of their rights guaranteed by Section 7 of the Act, by doing as follows: Through its business agent, Lloyd Reisner, on or about May 4, 1954, outside the home of Lloyd Reisner, threatened, physically assaulted, and battered and maliciously and wilfully trespassed on the person and property of Coleman Wiggins, an employee of the Midwest Transfer Company, in retaliation for his not assisting the Respondent Union in a labor dispute. The acts of the Respondent, above described, occurring in connection with the Employer's operations, have a close, intimate, and substantial relationship to commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce. The acts of the Respondent Union and the Respondent Reisner, business agent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and Section 2 (6) and (7) of the Act.

Pursuant to notice, a hearing was held on October 18, 1954, in Indianapolis, Indiana, before the duly appointed Trial Examiner in which all parties participated, were represented by counsel, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs and present oral arguments.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE LABOR ORGANIZATION INVOLVED

Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act, which admits to membership employees of the Company. Lloyd Reisner is business agent of Local No. 135 and was at all times material hereto an authorized agent, officer, and representative of the Respondent Union.

## II. THE BUSINESS OF THE EMPLOYER

The Midwest Transfer Company is an Illinois corporation engaged as a contract carrier of motor freight, licensed by the Interstate Commerce Commission, and operates in the several States including Indiana, Illinois, Ohio, Iowa, Kentucky, Michigan, New York, Minnesota, Missouri, and Wisconsin, and maintains 25 terminals scattered throughout the States mentioned, with a terminal at Indianapolis. The Employer, during the past 12-month period, has furnished services, the value of which is in excess of \$3,500,000 to concerns and persons located throughout the States in which it operates, over \$2,000,000 of which was derived from furnishing services which consisted of transporting freight from points in one State to destinations in other States. The Employer is now, and at all times material hereto was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

## III. THE UNFAIR LABOR PRACTICES

A. *The setting and background*

The Charging Party, Coleman Wiggins, worked at RCA for 59 days stating: "every time you get 59 days in, they lay you off." From there he went to work for Indiana Oxygen Company as a truckdriver, in November 1953. At this time there was a strike going on and Local No. 135 of the Teamsters Union was involved in this dispute. When the strike was settled, the former employees were rehired and the employees hired during the strike were dismissed—including Wiggins, who received 2 weeks' pay in advance. About a week later, at the end of April 1954, he went to work for Midwest Transfer Company as an extra, driving and unloading trucks. He is now a full-time employee of Midwest Transfer Company. Wiggins is not now a member of any Union and never has been although he has attempted to become such member. Local No. 135 is the exclusive bargaining agent of the employees of the Midwest Transfer Company.

B. *Wiggins attempts to join the Union*

Charles Huffman, who is now and has been an employee of Midwest Transfer Company for about 5 years, is a union-shop steward, and it is his function, at the terminal where he works, to see that all employees get union cards. He testified that he did not know where Wiggins came from and saw him for the first time the day Wiggins came to work. On May 3 they met at Standard Brands, where Wiggins was loading up, about 5 o'clock in the evening. They discussed the fact that Wiggins did not have a union book, and Huffman told Wiggins that after he had worked 30 days it was the policy that drivers have to join the Union. They made a date to meet at Huffman's house at 7:30 the next evening, May 4, and Huffman agreed to go with Wiggins to the union hall for the purpose of getting a union book. In this connection, Mrs. Wiggins testified that her husband came home about 6 or 6:30 on the evening of May 4 and told her to hurry up and fix supper "that he had to meet 'Skeeter' [Charles Huffman] at his house." He also told her that he was going to get his union book.

Wiggins testified that he went to Huffman's house in his car, and they then drove in his car to the union hall of Local No. 135. According to Wiggins they talked to a man whose name he did not know (Union Agent Barney Trefts) "a great big fellow and gray headed . . . Huffman asked him could he give me a book, and he said he thought it could be arranged." Wiggins filled out a card and presented his money (\$34) but after the agent looked at the paper and read it, he purportedly started hunting for a stamp: "Well, he didn't find none, so he told me that he couldn't give me one, somebody else would have to." According to Huffman's testimony, they saw Barney Trefts in the union office building and he told them they would either have to see Lloyd Reisner or Sansoucie (president of Local No. 135).

Wiggins, as a witness, identified Business Agent Loran W. Robbins as the man they talked to next. "Huffman asked him could he give me a stamp, and he asked me did I work at the Indiana Oxygen Company, and I told him yes, and he said he'd, 'Skeeter,' would have to see somebody higher than he was before he could give me one." [Emphasis supplied.]

Robbins' version was. "Well, they more or less both came up to me and Wiggins asked me if he could get a book, and I remembered his face, of course, from the strike situation, and I asked him if he had scabbed on the Indiana Oxygen strike, and he said yes, he had. So, I told him, if he was to get a book from this Union, he would have to see someone with more authority than I had to get it." [Emphasis supplied.] Upon leaving the union hall, Wiggins and Huffman went to a nearby

drugstore where Huffman phoned Reisner's home, and they then drove out to Reisner's home in Wiggins' car, arriving at dusk, or sometime around 8 o'clock.

### C. The episode in the garden

Reisner and his stepson, Harry Wells, were out in the garden covering up tomatoes. Wiggins testified: "I caught a couple of newspapers and covered up tomatoes. Then Mr. Huffman asked Mr. Reisner, he says, 'I brung a good boy out here and I would like for you to give him a book, he's going to work at the Midwest' . . . Well, Mr. Reisner, he looked at me and he said, 'Did you work at the Indiana Oxygen Company?' and I said, 'Yes, sir, Mr. Reisner, I did, it ain't no use lying to you.' . . . After I told Mr. Reisner that, he said, 'You see that road there,' I never says a word, I never opened my mouth, he just turned and he says, 'You see that road?' And I just turned and started to walk to my car."

Wiggins stated that they were in the garden only 3 or 4 minutes, Huffman said it was less than 5 minutes, and Wells said it was 5 to 10 minutes, "no less than five minutes." Huffman verified as follows. "I and Coleman [Wiggins] goes up to the garden and Coleman was going to ask Lloyd [Reisner] for a book, and Lloyd told him to head for the car, and Coleman asked him again that he would like to talk to him about a book, and Lloyd told him to head for the automobile. Then, just about that there time that he was going to the automobile, that was just about the time that he went to the automobile." Huffman said he was standing with Reisner and Wiggins when they were talking, but that Wiggins started the conversation. Elsewhere he said "I took him up there in the garden to Lloyd to see about a book . . . It happened so quick that I really don't know what was said then." Also "There was something said about him a-working somewhere, but it *happened so quick* that I couldn't tell you what else was even said." He admitted hearing Reisner say something about Indiana Oxygen Company, and testified he heard Reisner tell Wiggins to leave the property a couple of times.

### D. Reisner's version

Lloyd Reisner testified: "I seen a car drive up, coming in the driveway, pull up there close to my house, stop and two men got out of it, Skeeter and Wiggins . . . From a description I had had of Wiggins' car and the description I had of him, had heard about him, I figured who it was, and he walked up there and said something—Skeeter started to say something, I don't know what he was trying to say, but he never got it said [Huffman is afflicted with stuttering] and Wiggins said he come up to get a Union book, or something, and I told him I didn't have no union books, he'd have to get that at the Hall and I would be in the office the next day, that if he wanted to talk about business, to come down there, I was off duty, and I didn't want to be bothered with him. He said, 'I came down here and I'm going to have a Union book' He said something else about a Union book and *called me a name*, and that was whenever I started after him." [Emphasis supplied.] He admitted he asked Wiggins in the garden if he had worked at Indiana Oxygen Company. Reisner testified that it was after Wiggins told him he had worked at Indiana Oxygen and after being called a name: "I told him, I said, 'You see that road out there, you better get back out and down that road,' and he said, 'Well, I come up here to get a book.' I told him, I said, 'I have got office hours, if you want to talk business, see me down there tomorrow. I am off duty and I don't want to talk about it out here.' He said, 'Well, I'm going to get a book,' and that's when he called me the name, whenever he called me the name, that's when I started after him" Further, "He just said that he was going to get a book, he said it like he meant it."

Reisner further testified he told Wiggins 3 or 4 times to leave his property "He said, 'I come out here to get a Union book.' . . . I told him to get out. . . . And he popped off something and called me a name, and I started after him" Wiggins denied that he accosted, threatened, or assaulted Reisner, and I so find. *N. L. R. B. v. Universal Camera Corp.*, 340 U. S. 474. It is entirely out of the realm of belief that a man of Wiggins' slight stature, 5 feet 8 inches, 145 pounds, seeking a permit to earn a living for his family would assume a belligerent attitude before 2 men of the size of Reisner (5 feet 10 inches, 170 pounds) and Wells, his stepson (192 pounds, 6 feet 1 inch), and in their own garden. Reisner's capacity for violent action was amply demonstrated and in my opinion, he handled the truth just as recklessly.

### E. Reisner's stepson testifies

The next witness, Harry Francis Wells, stepson of Lloyd Reisner, now a civil service employee, Army Finance Center, Fort Harrison (also a member of the Teamsters

Union), testified. "Well, sir, when the car pulled up, Mr Wiggins and Mr. Huffman, I knew neither one of the gentlemen at that time, and they pulled up and come on over there where Pop and I were working there in the garden and Mr. Wiggins told Pop he wanted to talk to him, and Dad said, he explained to him that he had a little baby there in the house that was sick and mother was upset, and everything, and he preferred not to talk business there at the house, he wanted him to come down to the office the next day. Well, Wiggins, he insisted on talking, and Pop ordered him off the property, and this fellow got a little bit nasty about it and Pop told him two or three other times to get off his property, and finally he started for him, to move him, and the guy turned around and took off walking at—walking toward the car." As far as Wells could remember only Wiggins and Reisner did the talking there in the garden. He said he was standing to the left and rear of Reisner by about 2 feet. He described Huffman as being at least 8 feet away from Wiggins—"Probably more." He further said Huffman was about 3 feet in back of Reisner and Wiggins was about 2 feet from Reisner on the opposite side.<sup>1</sup>

Continuing, Wells testified: "I believe he [Huffman] started to say something sir, but Mr. Wiggins interrupted him before he had a chance to say anything. . . . As closely as I can get it, after Pop had told him that he preferred to have him come back down to the office, he said, 'God damn it, I want to talk to you now.' Pop said, 'I told you to get off the property, I can't talk to you now,' or something along that line. He said, 'You son-of-a-bitch, I came out here to talk to you, and I want to talk to you now.' That's when Pop went after him to move him." I reject this version as being incredible.

#### F. The assault as described by Wiggins

Wiggins testified that when about 50 feet from his car and 10 feet in front of Reisner "I looked behind me and he was coming after me with that iron pipe, and I didn't walk then, I ran as fast as I could to my car. So, when I got in the car, I had the key in my pocket, the emergency brake was on, it was setting up on a hill about like that [indicating], and he was so close on me that I got my foot hung in between the door and the seat . . . the door comes right against the car, the car was sitting on a slant, and he was close on me; I didn't get my left leg in, I got it in behind the thing where you push the seat up and back and . . . I couldn't get my foot out." The pipe in question was a rusty iron waterpipe between 4 and 5 feet long and 2 to 2½ inches in diameter—certainly, a lethal weapon. Wiggins further testified "Well, he just started beating on the automobile, and every time he'd hit the car he'd say 'you son-of-a-bitch, I am going to kill you.' He'd just keep a-saying that all the time. . . . Well, he hit it all over. He hit it in the front and he hit it on the side, and he hit it in the back. Well, I don't know how many times he hit it, but he really beat it up." Wiggins was cut on the head right over his left eye. As to how this happened he said "It was a hard top convertible, and after he broke them big windows out, well, he had a whole swing through there, and I had my foot hung and I couldn't get down in the seat too far because I couldn't bend my leg right in there to get down any further." Describing that he said Reisner even hit the steering wheel "and that knocked it off on my head"—Mrs. Wiggins said, "I looked up as they came through the back kitchen door, and his face was bleeding all over, and there was blood on down his shirt sleeve and a knot over his eye, and it was swollen, and pieces of fine glass in his hair and all over his clothing."

Huffman with regard to Wiggins' condition said "He had some blood on his face up here [indicating], on his forehead, that was chipped, you know, by the glass."

Wiggins also described that during the assault he heard a woman's voice screaming and telling Reisner to quit. Wells denied that his mother came out into the garden and yelled: "Stop it, Lloyd," or, "Lloyd, you are liable to kill him," testifying: "If she said it, I would have probably heard it, and I didn't hear it." Elsewhere, however, he said his mother didn't know anything about it until it was *almost* over, that she didn't come out into the garden *then*: "because the youngest baby had got to choking on something and the only reason she come out then was to call Pop, and then she got to the door and that's as far as she came." Being questioned

Q. Did you ever hear anyone screaming there?

A. I don't remember it sir, if there was

However, this evidence is only cumulative—the photograph of the damages and the testimony as to Wiggins' bloody condition mutely testify to the maniacal ferocity of Reisner's vengeance.

<sup>1</sup> Reisner testified that his stepson was in the garden with him. Huffman said he did not see the son in the garden, but admitted he could have been there.

Huffman, the union steward responsible to Reisner in the union chain of command to its hierarchy was in an unenviable position as intermediary between Reisner and Wiggins. He is a frail man, afflicted with a severe speech impediment.

"Coleman took off walking and Lloyd was there behind him, and then all at once, why, they was a-going at a pretty good step then before they got into the automobile. . . . They were in a pretty good walk, *almost* a run." [Emphasis supplied.] He testified that he saw Reisner pick up the "club," which "was sitting there aside the tree, on the ground, rather," that Reisner was approximately 15 or 20 feet from the car when he picked the club up. He said he wasn't close enough to the car to see what was going on, but "Reisner was just beating his car, that's about all I seen." [Emphasis supplied.]

#### G. Reisner apparently pleads self defense

Reisner testified that they left the garden at a fast walk and, "Whenever he [Wiggins] got down to his car, he got in the left side and slammed the door and he leaned over, and whenever he did, I reached around and got that iron pipe and started working on his car."

Q. Did you see him do anything?

A. I seen him lean over in the seat.

Q. Did he ever get up off the seat?

A. He got up off the seat and started to backing out after I had beat on his car there for two or three minutes.

Reisner testified that his son "hollered at me whenever he [Wiggins] leaned over in the car there, he hollered something about, 'Watch out, Pop.'" He then said he picked up the iron bar right by the *side* of the car, saying: "I throwed them [iron pipes] up there by the drive, because once a week we have a garbage man that comes around there and picks up our garbage and our trash." In response to his attorney's question as to whether he was in fear of bodily harm, Reisner answered: "Yes, I was afraid." This, I believe to be untrue.

Wells' version was that when Wiggins started walking toward the car: "Pop followed him all the way, and I come along behind. Well, when Wiggins got in the car, he got in and slammed the door and immediately bent over on the seat and I hollered at Pop, I said, 'Watch him, Pop, he's going for something.' At that time, well, he had the garden plowed, and there was about, oh three or four lengths of pipe no longer than that [indicating] . . . Oh I'd say not more than three and a half or four feet, sir, if that, two feet, I'd say, approximately. Well, they had been in the garden when the garden was plowed and they were laying up against the tree there, right, oh, about three feet from the car. Pop immediately picked up one of the pieces of pipe and started beating on the car, trying to distract Wiggins from whatever he was doing, and I don't know, he hit—I don't know how many times he hit the car, for a length of about a minute and a half or two minutes, and finally Wiggins straightened up and put his car in reverse and took off back down the driveway."

Wells testified that Huffman was in the background after the trouble started. "I didn't know who he was, and I was keeping back of him, because I didn't know what he was going to do."

Asked if he did anything to try to stop his father from beating Wiggins, he said "Well, sir, the best I saw, he never hit him with it. As I saw, Pop was just trying to protect himself, trying to distract the man. In fact I was the one who hollered that he was going for something."

Q. When did you holler that?

A. After he jumped in the car and slammed the door, he leaned over in the seat as if he was reaching underneath for something, and I said, "Watch him, Pop, he's going for something."

Q. If Mr. Huffman testified that your father picked up the club before Mr. Wiggins got in the car, you being there, you are now testifying that Mr. Huffman testified falsely?

A. Well, sir, I'd say one of us was mistaken, and I am pretty sure I am not.

Wiggins testified that Reisner pounded the car for 5 or 6 minutes: "Well, when he quit beating on the car, as soon as I could get the key in and get my foot out of the door, well, I started backing out, and I didn't even stop for Huffman, he caught my car while I was a-going out the lane, because I didn't even wait for him." Wells testified, "Mr. Wiggins had that car in reverse and was out of there so fast, sir, I would have hated to have had to time it . . . Mr. Huffman, who had been in the background all this time, he took off and caught him on the run and jumped in."

Wiggins testified, "We pulled back out on the road and I was sitting in glass that thick [indicating] in the front seat, because the whole thing was right on me, and we got pulled back out on the road and took the glass out of the car and come home."

A piece of glass from the windshield was offered as a demonstrative type of evidence, though it was not introduced because of the impracticability of sending it as demonstrative evidence to the Board.

#### *H. Wiggins' attempts to get a union card after the incident*

Wiggins testified that, on the advice of his lawyer, he went back to the Union alone about a month after the incident to get a union book. He also went a second time about a month after the first time. The first time he didn't see anyone: "because they was all busy, and I waited over there and waited. . . . It must have been a half hour, and then I come home." Mrs. Wiggins testified that he went to the Union twice after the incident to obtain a union book. On the second visit he talked to Gene Sansoucic, the president.

Q. Did you tell Gene Sansoucic at that time, or anyone after the incident at the Lloyd Reisner home, that if you got a membership in the Union that you would drop this proceeding before the National Labor Relations Board?

A. I don't remember it, no.

Wiggins stated that he saw Reisner on the last trip: "He was coming out of the conference room there, or something. I don't know what kind of room it is, but he was coming out of the room, him and Sansoucic was coming out together."

Q. And did you stop and talk to Mr. Reisner?

A. Yes, sir; and I didn't even know him.

Q. And did you ask him if you could get a book or membership in the Union?

A. Well, I don't remember. No, I don't think I did. I told him I wanted to see Sansoucic.

Q. Did you see Sansoucic?

A. Yes, sir.

Q. And was your purpose in seeing Sansoucic in becoming a member of the Union?

A. Yes, sir.

Q. And that was the first occasion?

A. No, that was the last.

Reisner testified he saw Wiggins at Midwest Transfer sometime later after the incident.

Q. Did you speak to him out there?

A. Yes, sir.

Q. Did he speak to you?

A. Yes, sir.

Reisner testified he saw Wiggins in the union office building sometime later. "I don't remember how long, but he come up to me and said something about getting a union book. I said, 'Here is Gene Sansoucic, talk to him.'"

He said Sansoucic came out of the door, ". . . about the time Wiggins asked me something about a book." Reisner turned around and left. Wiggins did not get the book. Counsel Fillenwarth argued: "It surely should raise an inference at least in the minds of the Board as to how determined he was at the home of Lloyd Reisner to get that membership book one way or another, if necessary even to assault a business agent." General Counsel Campodonico offered to stipulate that Coleman Wiggins would like to join Local No. 135.

#### *I. History of Local No. 135 and the Indiana Oxygen strike*

Loran W. Robbins was a business agent for Local No. 135. According to his testimony, Teamsters Union Local No. 135 was in trusteeship in 1951. In 1951 or 1952 it was taken out of trusteeship by the International and all offices of the Union were voted for by the members except the president. Mr. David Beck, president of the International Brotherhood of Teamsters appointed the president of Local No. 135 with the consent of the members at a mass meeting at the State fair grounds, in Indianapolis. In December 1953, pursuant to an arrangement at that general meeting, the members voted for all offices in December 1953, including the office of president.

He said that the Teamsters Local No. 135 was the bargaining agent of the drivers and of the production workers of Indiana Oxygen Company in Septem-

ber 1953 under two separate contracts. These expired in May 1953, "but it had a continuous type clause in the agreement. So, therefore, it would continue on. We were in the process of trying to negotiate a new agreement in that period from approximately April or May up until September." The employees went on strike in October 1953 and the strike lasted about 6 months, until the last of April or first of May 1954. During the strike George Ryan represented the company and occasionally Allen Nolan. After the strike took place, the company refused to recognize the Union.

Decertification petitions were filed with respect to both units—drivers and production workers—of the Teamsters, were investigated by the Indianapolis Office of National Labor Relations Board and charges were dismissed or withdrawn. One of the points of settlement was that the Union agreed to have an election—a two-unit election. As a result of these 2 elections, 1 involving truckdrivers and 1 involving production employees inside, Local No. 135 was certified as the bargaining agent on or about June 10, 1954. Representatives of the Union and of Indiana Oxygen Company continued to negotiate from on or about June 10 until the contract was signed on September 13, 1954. This contract was negotiated by Mr. Ryan for the company and Mr. Barney Trefts started negotiations for the Union and Robbins wound up the negotiations for the Union. Robbins recalled seeing Wiggins working for Indiana Oxygen while the strike was in progress and that he yelled insulting remarks at the pickets.

Counsel Fillenwarth, the Respondents' attorney stated: "We are going to show by witnesses that the Indiana Oxygen Company had filed . . . decertification proceedings and after the National Labor Relations Board investigated those decertification proceedings, those decertification proceedings were dismissed, and we will show by testimony that the Indiana Oxygen Company fostered, instigated, controlled those decertification proceedings; that the Indiana Oxygen Company refused to negotiate with the Union after the strike took place on the basis that the Union was no longer the bargaining agent for the employees, that only after the Union agreed to have an election by the National Labor Relations Board and the Union was certified by the National Labor Relations Board, did the Indiana Oxygen Company sit down and negotiate, that the contract with the Indiana Oxygen Company was only negotiated as late as September 13, 1954, approximately a month ago . . . and that this Coleman Wiggins thing has been going on all during that time."

Mr. Fillenwarth argued: "Why did he want a membership, and as a result of his efforts to get membership, what did he cause. He caused trouble which is what the Indiana Oxygen Company wanted, because we were still attempting to get together with the Indiana Oxygen Company. This record here of the National Labor Relations Board in Indianapolis, is replete, full of activity of the Indiana Oxygen Company in an effort to do away with the Union. The office and the records here of the National Labor Relations Board will show affidavit after affidavit of employees of the Indiana Oxygen Company, employees who still stayed in while the strike was going on, that the officials of this company, and, in fact, this Bob Brant, engineered the petition for decertification of these two different unions." Thus Counsel was trying to show a relationship between Wiggins and Brant, an official of the Indiana Oxygen Company, in that Wiggins sought advice as to a lawyer from Brant and kept him advised of developments in case.

#### *J. Hiring Fink as lawyer*

Robert P. Brant, vice president of Indiana Oxygen Company, testified that Wiggins came out to his home one evening to see him about 2 weeks after he left his employment, and consulted him about obtaining legal advice. Brant contacted Mr. George P. Ryan and Allen Nolan, the regular attorney for the company, and they recommended a Mr. Fink, and he so advised Wiggins by telephone. He also testified that James Eustace, one of the employees of Indiana Oxygen during the strike, had filed a suit for damages against Local No. 135, and that it had been filed by the company's attorneys, Ryan and Nolan, on Mr. Eustace's own behalf, but that these attorneys are not involved in that lawsuit at the present time. When asked if a case was not filed before the National Labor Relations Board under Case No. 35-CB-128, naming Teamsters Local Union No. 135, in which the name of this employee, James Eustace was mentioned in the charge, he stated "I think there was a case filed," but replied, "I don't know," when asked if that particular charge was later withdrawn.

Wiggins testified that Irving Fink was his lawyer, and that he located him through Skinny Cunningham, a friend, who is a plumber, and denied that anyone at Indiana

Oxygen referred him to Fink or that he knew George P. Ryan or Allen Nolan. He said he went to see Fink on May 7 and "he is still representing me." Wiggins worked under the supervision of Bob Brant at Indiana Oxygen, saying: "I went and talked to Bob, but we didn't talk about no Union book and I didn't go down to the Indiana Oxygen Company to talk to him."

Attorney Irving L. Fink, who was subpoenaed, testified that he has been representing Wiggins, and that he is at present representing James Eustace. As to how long he has been representing Eustace he testified: "I believe I entered that appearance, oh, possible three weeks ago, I am not sure of the exact date."

Huffman said he did have a conversation with Wiggins about a month after the incident, at the Midwest terminal, in which "there was something brought up about Indiana Oxygen, about a lawyer over there. . . . I don't know word for word how it was, but. . . . I was under the impression that it was said, that—the Indiana Oxygen had a lawyer for the case. "I believe that Brant suggested Fink but did not hire him. Wiggins testified

Q. And you talked to him about this incident involving Lloyd Reisner at Lloyd Reisner's home?

A. No. I just told him, "Look at the way they beat up my car," and that's all that was said. This was the next evening after the incident.

Q. How many times had you been to the home of Bob Brant before?

A. Well, I'll say three or four times.

Q. Was that during the time that the strike was in progress?

A. Yes sir.

Said he had been to Brant's home a "couple times maybe" since the incident, but denied that he had kept Brant advised of developments in this matter, or had talked to him about this matter in any way. He said he just went to visit him. My resolution of this conflict is that Wiggins prevaricated in order to protect his friend and former boss. Nevertheless, it does not follow that simply because one does not believe a particular thing to which a witness testified that everything he says must then be rejected. Judge Learned Hand in *N. L. R. B. v. Universal Camera Corp.*, *supra*, states the rule thus:

It is no reason for refusing to accept everything that a witness says because you do not believe all of it, nothing is more common in all kinds of judicial decisions than to believe some and not all.

#### K. Respondents' attorney takes witness stand

Edward J. Fillenwarth, attorney representing Respondent Union, put himself on the stand as a witness in order to offer evidence to the effect that Wiggins was processing grievances or charges to force them to give him a union membership. He said, "Mr. Wiggins wanted a membership book and he was willing to trade, if he could the dismissal of the case in Criminal Court and the dismissal or withdrawal of this case, if he could, for a membership book, and that we would not agree to. . . . I would say that on at least four different occasions, Mr. Wiggins and his lawyer have asked me to promise to give Mr. Wiggins a. . . . membership book in Local 135, and if I made that promise, on behalf of the Union, that the charge which we are now trying would be withdrawn, and on each of those occasions I took the position on behalf of the Union that the Union could do no such thing, and that I, as an attorney representing the Union, could make no such promise, and that I would not permit the Union to make such a promise, because I thought it would be illegal. . . . Now, if the Union wants to voluntarily give or permit a person to become a member of the Union, that is one thing, but we cannot predicate it on the basis of interfering with any matter before the Board. . . . Now, I did say this: . . . Mr. Wiggins could do as he pleased, and that if Mr. Wiggins would conduct himself properly out there at Midwest and would not get himself into any difficulty in so far as the employer was concerned, and if after the heat of the Indiana Oxygen difficulty and the strike, and the tremendous litigation before the Board and before the courts in Marion County had subsided, that I myself would go to the Union and attempt to get him a membership in the Union, because we believe as a matter of principle that everyone who is working under our jurisdiction should be, if at all possible, a member of our Union. We do not take in everybody, but I would say we take in most everybody, 99.44 percent. I even went so far as to tell Mr. Wiggins and his attorney, as an example, that he have got four or five people now employed at the Indiana Oxygen Company who refused to go out on strike involving the same company three or four years ago, and those people are now members of our union, but we could not predi-

cate membership in our union upon an offer to dismiss anything before the National Labor Relations Board."

He explained that criminal proceedings were commenced against Respondent Business Agent Reisner and that he had asked for a continuance of this case because he wanted the matter pending in criminal court determined before this case came up. He explained that the case was set to come up in criminal court on October 8, 1954, and they were scheduled to be in criminal court at 9:30 a. m.: "When we got there, on October 8, Mr. Coleman Wiggins, his wife, and Mr. Fink [Wiggins' attorney] were present." He was talking to Mr. Fink in court before it convened, "... and in view of what we were saying at the time, Mr. Fink asked the court for our case to be passed over ... so that we could discuss this matter further and perhaps it could be settled. We discussed it for an hour and came back and we lost our place and sat until ten minutes of 12 00." The case was called for 11:50 a. m. and Mr. Fink was not in the courtroom. The court said for Mr. Wiggins to contact his lawyer, and he couldn't get hold of him. He had left Justice of the Peace Court where Wiggins thought he was. "About that time, it was five minutes after 12:00 and Mr. Wiggins told myself and the prosecutor that Mr. Fink said he did not want to proceed with the case until he got back. Under the circumstances, I asked the court to continue the case because I didn't think we should proceed without Mr. Fink being present, if he wanted to be present. The case was again set for October 17, but was continued because of the death of the prosecutor here in Marion County. The case is set for 9:30 tomorrow morning, which is October 19, 1954."

Asked by General Counsel: "Isn't it possible that during the settlement negotiations ... that they were talking about the other case that could be settled, not this case necessarily?" He answered "Positively no. Their agreement and offer was to dismiss, to ask the court to dismiss the matter pending in Criminal Court and to withdraw the charge that was filed before the National Labor Relations Board, and, furthermore, after an hour and a half telephone conversation last Friday afternoon, which I believe was October 14 or 15 of 1954, an understanding was reached under which Mr. Fink told me that the case in Criminal Court would be nolle prosequi and the charge in this case would be withdrawn on no promise from me whatsoever, except that if Mr. Wiggins performed his job out there as any other employee, I would do my best to persuade the Union, after a certain lapse of time, to have the Union take him in as a member, and that message was conveyed also to you by Mr. Fink, Mr. Counsel (Campodonico), not by me."

Fillenwarth then stated, "I understand from you this morning that it was not conveyed to you [Campodonico] personally, it was conveyed to some other person in the office of the Board in Cincinnati. Mr. Campodonico replied 'I heard about it.'"

In this connection, Wiggins testified that the only thing that Fink told him was, "Friday, he called me and said that you [Fillenwarth] and him has made a settlement to give me a book the first of January, and I told him if he could give me one the first of January, he could give it to me now."

Q. Getting a book is an important matter to you, is it not?

A. That's right. I got to work to make a living like anybody else.

Q. Were you interested in dropping this matter before the Board if you got a book from the Union?

A. And my car fixed, yes.

#### *L. Description of Reisner's job and Local No. 135 setup*

Lloyd Reisner has been a member of Teamsters Local No. 135 since 1936, except for about 4 years when he was in the service, and a business agent and representative of that union since 3 years ago last July 11. He was made a representative and agent at the time the Union was put under trusteeship, and was elected secretary and treasurer in December 1953. As a business agent he has authority and does adjust disputes between employees and employers and can take applications for membership books. Reisner said the Union operates under the International constitution, and has no individual bylaws: "The members elected a by-laws committee and they sat down and spent months and months and brought it back to the membership, and they rejected it ... they [the membership] automatically let the union operate, Local 135, operate under the International Constitution. ... There is five women that works down there in the office under Marty Kauffman; one of them is a switchboard operator, one is an insurance, two of them is at the dues window, and general bookkeeping, and there is another one that is secretary to Gene Sansoucie." All monies have to go through the cash register, and the cash register notes it on the tape and on the ledger card of each member. As to whether as a business agent

he collects dues he said: "Our dues are sent in, usually mailed in. There has been a few times whenever I happened to be at one of these companies and they was getting ready to mail the dues in, in a check, and I have carried it in, but I don't make a habit of it, no."

Said he had taken dues in the form of cash not from a company, but "a few times from an individual who would maybe be on vacation or something like that and would miss a checkoff, and rather than to let the dues go, where it would have two months coming out, he'd give me the dues and I would write him out a receipt for it and carry it in, and the girl would mail him a stamp. That was once in a while, not often." He relies upon the office manager and his secretarial help to collect the money and keep records for him. Insofar as his office of secretary-treasurer is concerned he does sign documents and papers, and is a cosigner of all checks.

#### Concluding Findings

This record clearly establishes that Lloyd Reisner, business agent and secretary-treasurer of Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, wantonly and maliciously physically assaulted the person of Coleman Wiggins with an iron pipe, and also wreaked great havoc on Wiggins' automobile on the occasion of Wiggins requesting from Reisner the opportunity to join the Union because Wiggins had chosen to drive a truck for the Indiana Oxygen Company at a time when the Union was engaged in a labor strike against this company and was maintaining a picket line. On the basis of the facts recited and relied upon and upon the entire record I find the Union and its business agent, Lloyd Reisner, jointly violated Section 8 (b) (1) (A) of the Act. Section 7 of the Act guarantees Coleman Wiggins the right to engage in or to refrain from engaging in union activities, and Section 8 (b) (1) (A) immunizes him from reprisal by the Union and its agent, Reisner. The question of the responsibility of the Union for the acts of its agent, Reisner, in this case, is elemental. Reisner committed this unprovoked assault while acting in his official capacity within the scope of his authority and the Union is responsible for Reisner's tortious acts. The Board has affirmed this principle in cases too numerous to mention. As the Board held affirming the Trial Examiner in *United Furniture Workers of America, CIO*, 84 NLRB 583, the Act imposes upon labor organizations liability for unfair labor practices committed by their "agents" in accordance with the ordinary principles of the law of agency. Since the unfair labor practices proscribed by Section 8 (b) (1) (A) of the Act are analogous to intentional torts, it follows that, like principals whose servants or agents have committed such torts, a labor organization is responsible for its agents' acts of unfair labor practice under Section 8 (b) (1) (A) only (1) when the acts in question have been authorized in fact; (2) when, though unauthorized or even expressly forbidden, they have been committed "within the scope of employment" of the agents, or (3) when they have been subsequently ratified by the labor organization. Certainly the acts committed by "Agent" Reisner come within the second qualification when he was acting within the scope of his employment, and such are imputed to the Union. Congress specifically provided in Section 2 (13) of the Act that in determining the agents' authority, "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Whether Reisner committed the assault in his own garden, at the union hall, or on a picket line is immaterial so long as he was acting within the scope of his employment as business agent-secretary-treasurer. I so find.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents Lloyd Reisner, agent, and the Union set forth in section III, above, occurring in connection with the activities of the Employer described in section II, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondents have violated Section 8 (b) (1) (A) of the Act, I shall recommend that they be ordered to cease and desist therefrom, and that they take certain affirmative action designed to effectuate the policies of the Act.

The nature and variety of the unfair labor practices committed by the Respondents indicate a general purpose to limit the lawful rights of employees and applicants for employment, and persuade me that such practices are potentially related to similar unfair labor practices, the future commission of which may be reasonably

anticipated from Respondents' past course of conduct. The preventive purposes of the Act will be thwarted unless the Board's order is coextensive with the threat. I shall therefore recommend that a broad cease and desist order issue against Respondents.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. Local No. 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By the above intimidatory assault on Coleman Wiggins and other conduct found above, thereby interfering with, restraining, and coercing employees or applicants for employment in the exercise of rights guaranteed by Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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**Local #612, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L. and Goodyear Tire & Rubber Company of Alabama.** *Case No. 10-CC-69. April 5, 1955*

#### DECISION AND ORDER

On October 25, 1954, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, a copy of which is attached, finding that the Respondent had not engaged in any of the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel and the Charging Party filed exceptions to the Intermediate Report and the General Counsel filed a supporting brief, which was adopted by the Charging Party.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the Trial Examiner's findings, conclusions, and recommendations only to the extent consistent with the following:

1. The Trial Examiner found that the Respondent did not violate Section 8 (b) (4) (A) or (B) of the Act. We do not agree.

From May 21 to June 9, 1954, in support of a strike for recognition as representative of the truckdrivers of Bowman Transportation, Inc., a trucking concern, the Respondent picketed at the main office and terminal of Bowman, in Gadsden, Alabama, and at the plants of various